

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
September 15, 2009 Session

ANDY JACKSON TRUMAN v. SANDRA MARIE TRUMAN

Appeal from the Circuit Court for Hawkins County
No. 07CV0346 Thomas J. Wright, Judge

No. E2009-00237-COA-R3-CV - FILED JANUARY 28, 2010

Andy Jackson Truman (“Husband”) filed a complaint for divorce against Sandra Marie Truman (“Wife”). Following a bench trial, the court (1) granted Wife an absolute divorce on the ground of inappropriate marital conduct, (2) divided the marital assets, (3) allocated the marital debt, and (4) awarded Wife rehabilitative alimony and alimony in solido. Husband challenges each of these determinations. We affirm.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court
Affirmed; Case Remanded

CHARLES D. SUSANO, JR., J., delivered the opinion of the Court, in which HERSCHEL P. FRANKS, P.J., and D. MICHAEL SWINEY, J., joined.

Todd A. Shelton, Greeneville, Tennessee, and Crystal M. Goan, Bulls Gap, Tennessee, for the appellant, Andy Jackson Truman.

J. Matthew King, Kingsport, Tennessee, for the appellee, Sandra Marie Hammond, nee Truman.

OPINION

I.

The trial court dissolved a marriage of some 14 years. This was not the parties’ first attempt at marriage to each other, but their third. Husband and Wife were first married in 1979 and divorced in 1981; they remarried in 1982 and divorced the following year. Following their first two marriages, in 1989, they began living together again. On December 31, 1993, they were married for the third time. In May 1996, their child, Madison, was born.

Obviously, this most recent marriage befell the same fate as the others and ultimately ended in the divorce that is the subject of this appeal. At the time of the July 2008 trial, Husband was 50, Wife was 48, and their daughter was 12. With respect to their child, the parties entered into an agreed parenting plan that the trial court incorporated into its final judgment.

II.

In 1989, following his sister's death in a car accident, Husband purchased her home and the surrounding farmland from her estate for \$37,500. The parties lived in the house prior to their third marriage in 1993. Thereafter, it was their marital residence. After the death of Husband's father in 1996, Husband's mother made a payment of \$25,000 on Husband's mortgage. In January 1999, Husband executed a deed adding Wife's name as an owner of the property. The parties stipulated at trial that, at the time of the divorce, the house was valued at \$200,000 and was subject to a mortgage of \$20,000.

As had been the case since 1975, Husband was working at the time of trial for an electrical services contractor. In addition, from 1989 to 2003, the couple farmed tobacco on the land surrounding their home. After 2003, the tobacco operation was no longer profitable and the farming rights were sold. Over the years, Husband saw his income steadily increase, although he experienced layoffs and wide variations in certain years, earning \$22,000 in 1994 to a high of \$128,000 in 2005; he anticipated at the time of trial that his annual income would be about \$96,000. In 1994, Husband was laid off for a year during which time Wife was the sole income recipient in the family. In Husband's present employment, he earns about 50% of his regular income when he is not working at an actual construction site.

Wife has a high school education. Following high school, she went to work for Regions Bank in 1981. She continued to work there full-time throughout the marriages, except while she was on maternity leave and during a three-year stint when she left Regions to work at another bank. She returned to Regions in 1999. At the time of trial, Wife had advanced to the "head teller" position. She had spoken to her supervisors about possible advancement and had been advised that she could not advance in her employment without a college degree.

Other than the marital residence, which was the parties' largest asset, the parties accumulated several vehicles and various items of farming equipment during their marriage. In addition, Wife had a 401(k) account valued at \$11,000 and had contributed to a retirement annuity for ten of the years that the parties were married. No value for the annuity was presented at trial, but, at her current salary, Wife would receive no less than \$449 per month if she retired at age 62. Husband had no investment or retirement accounts of his own. Other

than the \$20,000 balance on the mortgage, the parties' debts consisted of credit card balances and a 2005 tax debt owed to the IRS.

Both parties made contributions to the marriage. While Husband had a larger income from his regular job and did much of the farming and home improvements and repairs, Wife worked full-time and took care of the cooking, cleaning, and other household responsibilities, made sure the bills were paid, and was their child's primary caregiver.

In 2003, Husband began working in a new position that required him to leave home and essentially relocate, on a temporary but long-term basis, to work on construction sites around the country. The parties had discussed the opportunity presented by his work away from Hawkins County and Wife had agreed that Husband should leave home for these jobs elsewhere. Wife said that she supported Husband in the move because he was a "good worker, and he deserved that position." The parties planned for Husband to find a place he could work for a few years so Wife and their daughter could join him. In addition, they planned to pay off their home with the extra money Husband would earn and retire early. As a result, Husband had been away from the marital home and his family the majority of the time since 2003. In 2006, he began working in Louisiana. Wife ultimately concluded that instead of working toward their goals, Husband had essentially moved on and left his family behind.

Apparently, the beginning of the end of the marriage came around Memorial Day weekend in 2007 when Husband was at home for only the second time that year. While he was home, Wife looked at his cell phone and noticed a phone number he had called at 10:30 p.m. the night before. Husband left to return to Louisiana the next morning. Wife called the number and heard a message identifying the number as belonging to a woman named "Beverly." She asked Husband about it and he told her that he worked with "Beverly." Wife said further investigation of Husband's phone records showed that he and the woman had been calling each other back and forth every day since April of that year, often two to three times a day. Wife said she, on the other hand, could never reach Husband when she called him.

The parties had planned a family beach vacation in the summer of 2007 at a time when Husband's work would not be as busy. Before the trip, Husband called Wife and left her a message telling her that he was not coming home and she and their daughter could do whatever Wife wanted. Wife took their daughter to the beach as planned. When they returned, Wife found that Husband had taken his belongings and moved out. Husband filed for divorce on August 13, 2007, citing irreconcilable differences. Wife answered and filed a counterclaim based on inappropriate marital conduct or, in the alternative, irreconcilable differences.

On September 10, 2008, the trial court entered its judgment of absolute divorce. Regarding the division of property, the trial court first awarded Husband two items as his separate property – \$40,000 of the equity in the marital home, representing Husband’s pre-marital purchase of the home, and certain farming equipment valued at \$4,000 that Husband obtained before the marriage. Wife had no separate assets. The trial court classified the remainder of the property as marital, valued it, and divided it as follows:

<u>Asset</u>	<u>Value</u>	<u>Husband</u>	<u>Wife</u>
Marital home (net)	\$140,000 ¹	\$50,000	\$90,000
Farming equipment	29,500	29,500	
1994 Dodge truck	2,500	2,500	
2006 Dodge truck	20,000	20,000	
2006 Chevy Tahoe	21,000	21,000	
2001 Honda Accord	8,000		8,000
Farm sapera ²	1,000	1,000	
Appliances, furnishings, camera equipment, guns	12,000	12,000	
Hot tub, furniture and furnishings	16,150		16,150
Wife’s 401(k)	11,000		11,000
2006 Dodge truck lien	(21,117)	(21,117)	
2006 Chevy Tahoe lien	(28,433)	(28,433)	
2001 Honda Accord lien	(2,000)		(2,000)
Bank of America card	(15,000)	(15,000)	
IRS tax debt	(2,888)	(2,888)	
Belk card	(1,200)		(1,200)
JC Penney card	<u>(800)</u>	<u> </u>	<u>(800)</u>
	<u>\$189,712</u>	<u>\$ 68,562</u>	<u>\$121,150</u>

The court further granted Wife’s request for spousal support and awarded Wife rehabilitative alimony of \$1,500 a month for five years and an award of alimony in solido of \$2,500 toward the attorney’s fees of Wife.

¹This figure represents the net value of the \$200,000 home after the award of \$40,000 of the equity to Husband as his separate property and the payoff of the Suntrust mortgage of \$20,000 are deducted.

²Husband spelled “Sapera” when he mentioned this asset. It is not otherwise identified or described in the record.

Following a hearing, the court granted, in part, Husband's motion to alter or amend the judgment and ordered Wife's award reduced by a total of \$6,500 in order to reimburse Husband for funds she had withdrawn from the home equity line after the trial and for damages she caused to a door at the marital home while attempting to gain entry to remove some of her belongings. Accordingly, the net award was \$75,062 to Husband and \$114,650 to Wife. Husband filed a timely notice of appeal.

III.

Husband presents the following issues:

1. Does the evidence support a finding that Husband engaged in an extramarital affair?
2. Is the division of the marital assets and debts inequitable?
3. Did the trial court err in the amount of alimony awarded to Wife?

In the concluding portion of her brief, Wife asks for her attorney's fees on appeal. This is not mentioned as an issue in a "Issues Presented for Review" section of Wife's brief and there is no argument on her request for fees. *See* Tenn. R. App. P. 27(b) ("If appellee is also requesting relief from the judgment, the brief of the appellee shall contain the issues and arguments involved in his request for relief as well as the answer to the brief of appellant.") Accordingly, we decline to consider Wife's request.

IV.

Our review of the trial court's findings of fact is de novo upon the record of the proceedings below, accompanied by a presumption of correctness, a presumption we must honor unless the preponderance of the evidence is against those findings. Tenn. R. App. P. 13(d); *Wright v. City of Knoxville*, 898 S.W.2d 177, 181 (Tenn. 1995); *Union Carbide Corp. v. Huddleston*, 854 S.W.2d 87, 91 (Tenn. 1993). There is no presumption of correctness as to the trial court's conclusions of law. *Kendrick v. Shoemaker*, 90 S.W.3d 566, 569 (Tenn. 2002); *Campbell v. Florida Steel Corp.*, 919 S.W.2d 26, 35 (Tenn. 1996).

A trial court has broad discretion in fashioning a division of marital property. *Fisher v. Fisher*, 648 S.W.2d 244, 246 (Tenn. 1983); *Barnhill v. Barnhill*, 826 S.W.2d 443, 449-50 (Tenn. Ct. App. 1991). It has the same broad discretion with respect to an award of alimony. *See Aaron v. Aaron*, 909 S.W.2d 408, 410 (Tenn. 1995).

V.

In framing his first issue, Husband asserts that the trial court erred in finding that Husband “had engaged in an extra marital [sic] affair.” In the end, he concludes that the court erred in finding, despite his apparent stipulation to the contrary, that Wife had proven grounds for divorce.³ In Husband’s words, the evidence presented “is not enough to support a finding of an extra marital [sic] affair and the Trial court’s finding of an inappropriate relationship is not enough to find that [Wife] has grounds for divorce.”

At the trial, Wife testified that she was convinced “beyond a shadow of a doubt” that Husband was having an affair in Louisiana. As evidence, she cited Husband’s cell phone records and the testimony of a private investigator she hired. Wife said that Husband had left her for different women to end their two previous marriages and concluded she must have “Sucker” printed on her forehead. Husband adamantly denied dating, or having an affair or improper relationship with any woman.

Husband testified in this regard as follows:

Q: Okay. Have you been out on dates in Louisiana while you’ve been married to [Wife]?

A: No, Sir.

Q: Okay. Have you ever been out with a woman in Louisiana with just you and her to a restaurant to eat dinner?

A: No, Sir.

Q: Okay. On August 23, 2007 you were in Louisiana, weren’t you?

A: Yes, Sir.

Q: Okay. And on that same day around 7:00 p.m. were you at Mariner’s Restaurant with a blonde woman?

³Both Wife and the trial court refer to Husband’s stipulation that Wife had grounds for divorce. In his brief, Husband neither acknowledges nor disputes that he made such a stipulation. It is obvious to us that the record supports a determination that Husband stipulated that Wife had grounds for a divorce. It is also clear that Husband did not object to Wife being granted a divorce, but rather to the divorce being granted on the basis of an extramarital affair.

A: I have no idea.

Q: Well, you said a minute ago you've never been out with a woman on a date?

A: And you quoted a date. I said, no, I've not been with nobody.

* * *

A: No. No. Okay?

Q: Okay. Now have you ever been in that Mariner's Restaurant sitting at a bar or a booth with a woman drinking liquor?

A: I've been in the Mariner Restaurant, yes, Sir, eating dinner.

Q: With a woman drinking beer and liquor?

A: They could be twenty women in there and twenty men in there. We sit side by side, yes. I'll say me directly with a woman? No.

Q: Okay. Have you ever gotten in your truck with a woman and given her a ride home from the Mariner's Restaurant back to your apartment and spent the night there with her?

A: No, Sir.

* * *

Q: Okay. So it's your testimony here and you're under oath that you've never taken a blonde, white female back to your apartment at night after an evening at the Mariner Restaurant?

A: That's correct.

Husband explained that it was customary for him to eat out with coworkers in New Orleans and for them to ride back and forth together because they all lived in the same apartment complex. He said their apartments had common walkways that allowed someone

to go in a front door to an apartment and then out the back door to a walkway to get to another apartment. Husband said 88 people worked for him and he frequently talked on the phone with them. He identified Beverly McGee as an accountant from another company that worked on the same job site and said they often discussed business and “just [had] conversations” by telephone.

Wife’s private investigator traveled to Louisiana to observe Husband. On August 23, 2007, Husband’s truck was located at “Mariner’s Restaurant” where Husband was seen sitting at a table with a blonde-haired female, two other females, and two males. Husband walked out with the same group of people. Then, the blonde woman got into the passenger side of Husband’s truck and Husband drove them to his apartment complex. Husband and the woman entered Husband’s apartment. The investigator monitored the front door until 1:40 a.m. and did not see either Husband or the woman leave. Further, he noted that there were no lights visible inside the apartment after 10:00 p.m. that night. The next night, Husband was again observed at the same restaurant, sitting at a table with the same blonde woman, another woman, and a man having drinks. Husband walked out with both of the women, then he and the blonde woman again left in Husband’s truck and went to his apartment at 7:20 p.m. The investigator kept watch until 1:30 a.m. and did not see either of them leave that night. The investigator reported that Husband opened the truck door for the woman, but he never saw Husband do anything “overtly romantic” to or with her. He agreed that, from his location, he focused on the front entrance to Husband’s apartment, but could not see the back door.

In granting Wife a divorce, the trial court stated as follows:

[T]he first item the Court’s required to address is just the granting of the divorce and the determination of fault in this particular case. Not only has [Husband] stipulated to there being grounds to grant the divorce to [Wife], but the Court finds that [Wife] has proven by a preponderance of the evidence that there are grounds to support the stipulation of inappropriate marital conduct, and specifically in the determination of fault, the Court finds that the preponderance of the evidence supports the allegation that [Husband] has abandoned [Wife] in this particular instance, and that whether the actual act of adultery has been committed or not, there’s an inappropriate relationship that you’ve had, and the Court finds that the veracity of the witnesses favors the version of events that [Wife] has testified to and that her investigators testified to because I don’t care if this lady works for you or does your laundry for you. She’s

blonde headed. She was with you at this club, and she was leaving with you. Now you lied to me about that, and I don't appreciate it, and I find that that happened in this particular case, and, therefore, the Court finds the preponderance of the evidence supports the allegations of [Wife] with regard to fault and that there is fault, as always, on both parties, but that the fault allegations of [Wife] have been proven by a preponderance of the evidence, which the Court will take into account to a certain extent below.

We do not find it necessary, or appropriate, to address the trial court's reliance on Husband's relationship with a female friend as a basis for the court's determination that Husband was guilty of inappropriate marital conduct. This is because the record is clear that Husband stipulated that Wife had grounds for divorce. Husband's stipulation, standing alone, is a sufficient basis for the trial court's award of a divorce to Wife; the remainder of the trial court's musings on the subject are unnecessary surplusage. The issue raised by Husband with respect to the "extramarital affair" is simply not germane to the issue of divorce because the trial court did not expressly base its "inappropriate marital conduct" determination on an act of adultery. Since Husband's stipulation supports the trial court's award of a divorce to Wife, we do not need to decide, and do not decide, whether Husband's contact with his female friend amounts to inappropriate marital conduct.

This court has observed that "[w]hen a ground for divorce has been stipulated or proven, the trial court may award a divorce to a party less at fault or declare the parties divorced; such choice is left to the trial court's discretion." *Watson v. Watson*, No. W2004-01014-COA-R3-CV, 2004 WL 1882413, * 4 (Tenn. Ct. App. W.S., filed Aug. 9, 2005); Tenn. Code Ann. § 36-4-129(b) (2001). In this case, the trial court expressly found "fault, as always, on both parties," but awarded a divorce to Wife. There is no error in the trial court's award.

VI.

Husband next challenges the division of marital property. He asserts that the inequity of the judgment is demonstrated in three specific areas: (1) Wife was awarded as her share of the marital estate nearly twice what Husband received; (2) the trial court failed to classify, value, and properly divide Wife's retirement annuity as a marital asset; and (3) Wife was allocated none of the debts owed on the Bank of America credit card or to the IRS.

After the trial court has properly classified property as marital, the court is charged with equitably dividing and distributing it between the parties. *See* Tenn. Code Ann. §

36-4-121(a)(1) (2005). “Trial courts have wide latitude, guided by consideration of the factors set forth in Section 36-4-121(c), in fashioning an equitable division of marital property.” **Brown v. Brown**, 913 S.W.2d 163, 168 (Tenn. Ct. App. 1994). Stated differently, the statute “gives the court wide discretion to adjust and adjudicate the respective rights and interests of the parties in all jointly owned property.” **Evans v. Evans**, 558 S.W.2d 851, 854 (Tenn. App. 1977).

As this court has often observed, however, “[a]n equitable property division is not necessarily an equal one. It is not achieved by a mechanical application of the statutory factors, but rather by considering and weighing the most relevant factors in light of the unique facts of the case.” **Batson v. Batson**, 769 S.W.2d 849, 859 (Tenn. Ct. App. 1988). Appellate courts are to defer to a trial court’s division of marital property unless the trial court’s decision is inconsistent with the statutory factors or is unsupported by the preponderance of the evidence. **Brown**, 913 S.W.2d at 168.

The effect of the court’s initial ruling was to award Husband 36.1% of the marital estate and Wife 63.9%. After adjusting the awards pursuant to the amended judgment that reduced Wife’s share of the equity in the home by \$6,500, Husband’s overall award was 39.6% while Wife’s award was reduced to 60.4%. In arguing that the division was unfairly weighted in Wife’s favor, Husband relies upon certain statutory factors:

Both parties have contributed to the acquisition of the marital assets and debts as the parties have been married for a substantial period of time, which should have lead the Trial Court to a more equitable division of property. Additionally, the Trial Court should have reached a more equitable division of property as both [Husband and Wife] are in good health, are gainfully employed, and are capable of continuing to support themselves. The record shows that [Wife] has a high school education and has advanced many times in her current employment. Furthermore, [Wife] testified that when she reaches retirement age and begins to draw on her pension plan, she will receive \$448.93 per month.

We agree that the cited factors are relevant in this case. This does not lead us, however, to conclude that the trial court’s decision was inequitable. Other factors must also be considered. First, the proof showed that although Wife had worked for Regions Bank for nearly 26 years and had earned a small increase each year, her annual income was \$24,000 in 2006. Her monthly take-home pay was \$1,672. Husband, on the other hand, was consistently earning much more, making twice, sometimes three times, Wife’s income since at least 1997. By 2005, he was earning around \$100,000 or more a year, nearly four times

Wife's present salary. At the time of the trial, Husband's gross salary was between \$6,720 – \$8,064 a month depending on whether he worked 40 or 48 hours a week.

Moreover, Wife had no prospective ability to earn a higher salary in the near future. Wife's income and expense statement reflects that following the marriage, she would be short about \$1,800 a month. She had checked into a promotion at work, but was advised she would need a college degree to obtain a higher-level position, which she was confident she could achieve. Her employer paid for educational costs only if she was a full-time student; Wife said she could not carry a full course load and also work and care for the parties' child. Wife had checked into the business program at East Tennessee State University and learned that obtaining her bachelor's degree would cost \$2,600 a semester in tuition costs. Wife felt that with financial support, she could continue to work while taking six hours a semester. At this rate, however, it would take her seven years to earn her degree.

In summary, Wife was certainly the disadvantaged spouse in this case; by the terms of the divorce, she had to leave the home in which she had lived and had helped maintain since 1989 to go out on her own and establish a new home for her and the parties' daughter.

Lastly, while Husband complains that the overall award was not equitable, there was little, given Husband's proposed distribution, that the trial court could have done differently other than to greatly reduce Wife's share of the equity in the marital home. At trial, Husband told the court that he wanted to keep the marital home and was willing to buy out Wife's share. He also requested that he be awarded the 2006 truck, with its debt, and the paid-for 1994 Dodge truck. He also wanted the 2006 Chevy Tahoe, but proposed that its debt be divided between the parties. With regard to the Honda that Wife drove, Husband proposed he pay the loan and that Wife would keep the car. Further, Husband requested that he pay Wife half the value of all the farming equipment and that he keep that property. The trial court largely gave Husband what he asked for with regard to these items. Husband's argument seems to be simply that Wife was not entitled to a larger share of the equity in the marital home than he received. We disagree. First, as the trial court took into account, Husband received separate property worth some \$43,000, while Wife had no separate property. In its bench ruling, the trial court first awarded the net equity in the home to Husband and then distributed the vehicles and other marital property and allocated the debt between the parties. The trial court continued:

Plus [Husband] has got the \$40,000.00 equity in the house that I found to be his separate property, plus the little bit of equipment. So that ends up being approximately \$200,000 in assets that he has going away from the marriage, but

\$157,562.00 is what I found to be marital estate awarded to him at this point.

And the items on [Wife's] side of the ledger only add up to \$31,150.00 at this point. Obviously, she's entitled to a substantial portion of the assets from the buildup of the value in the home during the course of the marriage and some of the other marital assets. And the Court finds that it would be equitable to award her the sum of \$90,000.00 from [Husband's] side of the ledger

At the post-trial hearing, the trial court emphasized that its property division was based on its consideration of a number of statutory factors, "the most important of which was [Husband's] ability to earn and [Wife's] ability to earn" The court added, "in fact, you know, she is entitled to have her fair share, and her fair share is going to be more than your fair share, because you've got the ability to go out and get some more share, and she don't [sic] as much, have that much ability. So that's why I tried to put her in a position where she . . . at the end of the day, will be treated fairly"

Upon consideration of the record and application of the relevant statutory factors, we conclude that the evidence does not preponderate against the trial court's findings in support of its overall division of the marital estate. In reaching this conclusion, we necessarily reject Husband's remaining claims – that the trial court failed to consider Wife's retirement annuity as marital property subject to division, and that it improperly declined to allocate some of the Bank of America credit card and IRS debt to Wife.

In its absolute judgment of divorce, the trial court expressly found that "[Wife's] 401(k) valued at \$11,000 and annuity are marital assets that shall be awarded to [Wife]." At the post-trial hearing, the trial court further explained its ruling:

The 401(k) had a value of \$11,000.00, and the annuity that I don't have a value for, I am quoting my decision, but I'd taken into consideration in the bottom line in the . . . equitable distribution of the assets. It's not up to me to prove things, it's up to you all to prove it, and I found in here that you didn't prove any value of that, but that I thought that, in considering the equitable distribution of the assets, that she ought to keep it.

As we noted earlier, the extent of the proof regarding the value of the annuity was that as of the time of the trial, Wife would receive no less than \$449 per month upon her

retirement at age 62. Although the trial court did not assign a separate value to the annuity, its ruling indicates that it considered this proof and determined that Wife should keep both her 401(k) and the annuity, not as her separate property, but as part of an equitable division of the marital estate as a whole. In our view, the same factors that the trial court considered in fashioning the overall property division were equally applicable to its decision that Husband should not receive half of Wife's annuity.

As to the parties' debt, the court identified each one by name and allocated it to either Husband or Wife. Both the Bank of America and the IRS debts were unquestionably marital debt and considered as such by the trial court. Again, we have concluded that the trial court's distribution of property and debts, guided by its consideration of the relevant statutory factors, was equitable. The fact that each party did not receive a share of each marital asset or become allocated with a share of each debt, does not render the division as a whole inequitable.

VII.

In support of its award of rehabilitative alimony of \$1,500 a month for five years, the trial court found as follows:

[B]ased on the relative financial disadvantage of [Wife], her age of 48, the length of the marriage, the fact that she has little in the way of education at this stage of life, a wealth of experience in the banking industry but not any experience that would necessarily translate into a better life for her on her own and would need to be educated in some additional manner in order to improve her lot, the Court finds that she is entitled to alimony and finds that it ought to be rehabilitative alimony. In other words, the law in Tennessee is that if a person can be rehabilitated, then that's what we should do. In fact, it's a disservice to someone like you that's bright and able to do for herself to say that you can't do for yourself. So anyway, that's why the award is going to be rehabilitative.

* * *

And so what the Court is going to order is that [Husband] pay \$1,500.00 a month to you as spousal support in rehabilitative alimony for the next five years.

I also find that based upon the relative financial disadvantage of the parties and the fault of the parties that [Wife] is entitled to some alimony in solido to assist in paying for attorney fees, and the Court orders that [Husband] pay \$2,500.00 towards the attorney fees as a cash payment in lump sum.

Spousal support decisions hinge on the unique facts of a case and require a careful balancing of the factors in Tenn. Code Ann. § 36-5-101(d)(1). In virtually every case, the needs of the party requesting alimony, the obligor spouse's ability to pay, and the relative fault of the parties are the three most important factors in determining an appropriate award of alimony. *See Bull v. Bull*, 729 S.W.2d 673, 675 (Tenn. Ct. App. 1987). In the present case, the trial court further considered the duration of the marriage and Wife's age. Other relevant factors include the manner in which the marital property was divided, the standard of living established during the marriage, each party's "monetary and homemaker contributions . . . ,” and the relative fault in the demise of the marriage.

The evidence does not preponderate against the trial court's finding that Wife was an appropriate candidate for alimony and that it should be rehabilitative in nature. Tenn. Code Ann. § 36-5-101(d)(1) reflects a preference for an award of rehabilitative alimony. *Kinard v. Kinard*, 986 S.W.2d 220, 234 (Tenn. Ct. App. 1998). Under the statute, rehabilitation means "to achieve, with reasonable effort, an earning capacity that will permit the economically disadvantaged spouse's standard of living after the divorce to be reasonable comparable to the standard of living enjoyed during the marriage, or to the post-divorce standard of living expected to be available to the other spouse, considering the relevant statutory factors and the equities between the parties." Tenn. Code Ann. § 36-5-121(d)(2), (e)(1). The evidence supports the trial court's observation that Wife was "bright and able to do for herself" and, with financial support and her own initiative, could reasonably achieve a college degree. In turn, this would allow her to attain a higher-level position with her long-time employer and improve her financial situation in the long-run.

Although Husband asserts that the evidence does not support an alimony award in this case, his argument really focuses on the amount of the monthly award rather than the type of the award or the award in general.⁴ Simply stated, Husband argues that \$1,500 a month is "far in excess [of] that which would have been appropriate." The amount of alimony to be awarded is within the trial court's sound discretion, and we will not alter the award absent a showing of abuse of discretion. No such showing is made here. As the trial court found, Wife was the disadvantaged party in the divorce and will need further education and training

⁴Husband presents no issue or argument regarding the award of alimony in solido; accordingly, our discussion of alimony is limited to the award of rehabilitative alimony.

before she can improve her own lot in life. The trial court found that Wife could achieve these goals within 5 years and found that Husband could and should pay \$1,500 a month to assist her. The evidence does not preponderate against the trial court's findings. The trial court did not abuse its discretion in awarding Wife rehabilitative alimony in the amount of \$1,500 a month for five years.

VIII.

The judgment of the trial court is affirmed. This case is remanded to the trial court pursuant to applicable law for enforcement of its judgment and for collection of costs assessed below. Costs on appeal are taxed against the appellant, Andy Jackson Truman.

CHARLES D. SUSANO, JR., JUDGE